IN THE HIH CUORT OF UTTARANCHAL AT NAINITAL

Civil Misc. Writ Petition No. 854(M/S) of 2003.

Yugal Kishor and eight Ors. ..... Petitioners

Versus

Additional Labour Commissioner,
Dehradun and two others. ..... Respondents

.....

Hon'ble P.C.Verma,J.

By means of this petition, writ of mandamus has been sought to command the respondent-State of Uttaranchal to refer the dispute under Section 4-K of the U.P. Industrial Disputes Act (hereinafter referred to as the Act). It is not disputed that the petitioners are workmen and they were under the employment of the respondent No.3-Uttaranchal Forest Corporation, Garhwal Region, Garhwal. It is also noticed that there is no limitation under the Act for the reference of a dispute. However, delay cannot come in way of reference for the reason that the matter was pending before the Conciliation Officer from 12.06.1996 and thus, on account of the delay on the part of Conciliation Officer, who did not either reconcile the dispute or request the Government for reference under Section 4-K of the Act.

Sri P.S.Danu, learned counsel for the respondent No.3 placed reliance on the judgment of Hon'ble Supreme Court in case **The Secretary, Indian Tea Association versus Ajit Kumar Barat and others, reports in 2000 Supreme Court Service and Labour Reporter, page 201,** in which the Apex Court has held that mandamus to refer the industrial dispute was not sustainable in view of the

facts and circumstances of the case. The facts referred for holding that the writ of mandamus was not sustainable in view of the facts stated in Para-18 of the judgment which is reported as under:-

> "Mr. Barat has further contended that his letter filed before the Conciliation Officer was not considered by the State Government. We may state here that the records were not placed by the State Government before the High Court but were made available by Ms.A.Subhashini before this Court. From the record we find that in the failure report the Conciliation Officer has indicated all the contentions raised by respondent No. 1 in his letter. Therefore, this contention has no force."

Here as notice, the Conciliation Officer did not pass any order or made any request to the Government to refer the dispute under Section 4-K of the Act. Therefore, the facts of this case are entirely different than the case of the Secretary, Indian Tea Association versus Ajit Kumar Barat and others (supra). Thus, the ratio of the judgment of Hon'ble Supreme Court is not arracted in this case.

In view of these facts it will not be useful to keep the petition pending. Therefore, the respondent-State of Uttaranchal is directed to refer the dispute under Section 4-K of the Act for adjudication by the Labour Court.

The petition is disposed of accordingly. No order as to costs.

(P.C.Verma,J.)

05.09.2003
P.Singh